IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5701 of 2006
with
MISC. CRIMINAL APPLICATION No. 10238 of 2006
in
CRIMINAL MISC. APPLICATION No. 5701 of 2006
with
SPECIAL CRIMINAL APPLICATION No. 945 of 2006
with
MISC. CRIMINAL APPLICATION No. 8116 of 2006
in
SPECIAL CRIMINAL APPLICATION No. 945 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UDAY DILIP SHAH & 13 – Applicants
Versus
STATE OF GUJARAT & 2 - Respondents

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Appearance :

MR AD SHAH for Applicants : 1 - 16.
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 1,
MR VM PANCHOLI for Respondent : 2,
NOTICE SERVED BY DS for Respondent : 3,

Appearance in Criminal Misc. Application No.8116 of 2006:
MR NV GANDHI for Applicant :
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 01/11/2006

C.A.V.COMMON JUDGMENT

1. The Criminal Misc. Application 5701 of 2006 is preferred by the accused in Crime Registered No. II- 3039 of 2006, with D.C.B Police Station Surat for commission of offences punishable under Section 4 & 5 of the Bombay Prevention of Gambling Act 1887 (hereinafter referred to as the Act) which has been now registered as Criminal Case No. 32431 of 2006 in the Court of JMFC Surat for quashing the same under Section 482 of the Criminal Procedure Code 1973 (herein after referred to as the Code.)The Special Criminal Application No. 945 of 2006 is filed by the then Honorary Secretary of the Surat Tennis Club seeking writ of mandamus against the Police Authorities for restraining them from initiating any action against the Club or its members under the provisions of the Act as the club is only permitting the Card Game of Rummy which is not gambling as per the decision of

the Apex Court and seeking quashment of the FIR being Crime Registered No II-3039 of 2006 at D.C.B. Police Station Surat The Misc. Criminal Application No. 8116 of 20065 in Special Criminal Application no. 945 of 2006 is filed by one of the member of the Surat Tennis Club for joining as party in the said matter. The Misc. Criminal Application 10238 of 2006 in Criminal Misc. Application 5701 of 2006 is filed for amendment of the petition and challenging the Charge-sheet dated 25.08.2006 filed by the Investigating Agency in Criminal Case no. 32431 of 2006. As all these matters arise out of common facts they were heard together and now being disposed of by this common order. The matters were heard for final disposal with consent of the Learned Counsels of the respective parties. Learned Counsels of the respective parties have waived the service of rule. The learned Counsels of all the parties were heard at length on their respective submissions as if the amendment application and joining party application were allowed.

2. Brief facts leading to filing of these petitions deserve to be set out as under. It is the case of the petitioners that the Surat Tennis Club was established in the year 1915 or thereabout. In the year 1984 it was registered as the Society and in the year 2001 it was registered as the Trust. The petitioner No.1 in Criminal Miscellaneous Application No. 5701 of 2006 had to lodge a complaint with the Club Authorities against one Shri Nikhil S.Kapadiya who happened to be the husband of the original complainant and Respondent No. 2 herein. The Managing Committee of the Club was constrained to suspend said Shri Nikhilbhai S. Kapadiya from 15.05.2006 to 5.06.2006 On 13.05.2006 a communication was sent to the original Complainant respondent no.2 herein informing her that her husband Shri Nikhil S. Kapadiya was barred from entering the Club premises from 15.05.2006 to 5.06.2006. The husband of the Complainant flouted the orders of the Club Authorities, and hence two communications dated 15.05.2006 and 22.05.2006 respectively were sent to the original complainant informing her that despite the

prohibitory orders her husband kept going to the Club premises ignoring the instructions by the security personnel. The Respondent No.2 and her husband with the help of some of the members filed written Complaint on 22.05.2006 at 8.30pm with the Police Commissioner of Surat alleging that in the club gambling activities were going on. This complaint came to be registered as Crime Registered No. II-3039 of 2006 with DCB Police Station Surat for the offences punishable under Sections 4 & 5 of the Act.

3. The Investigating agency raided the Club premises after drawing the preliminary panchnama and in the presence of panch collected the materials including plastics coins, packs of playing cards, cash etc and arrested persons playing Card Game in the Card Room of the Club.

4. The accused preferred the petition for quashing the FIR on the ground that they were playing Card Game of Rummy, which being game of skill is not gambling as decided by the Apex Court and this High Court in various

rulings. During the pendency of this petition the investigating agency has filed the charge-sheet on 25.08.2006 and therefore the petitioners of Criminal Miscellaneous Application No. 5701 of 2006 have challenged the same by amendment application that is being disposed by this common judgment. By this amendment the Charge sheet dated 25.08.2006 as well as the Criminal case No. 32431 of 2006 pending before the learned JMFC are sought to be assailed on the ground that the material on record shows that no offence under section 4 and 5 of the Act could be said to have been committed.

5. Learned Counsel Shri A.D.Shah for the accused applicants have mainly contended that the material on record produced by the investigating agency does not disclose any offence punishable under sections 4 and 5 of the Act. The reliance is placed upon the decision of the Apex Court in case of ***The State of Andhra Pradesh Vs. Satyanarayana and others*** reported in AIR 1968 Supreme Court 825 in support of his submission that the Card

Game Rummy is declared by the Apex Court to be a game of skill and hence it is not gambling as per the provisions of the Act. Shri Shah has also relied upon the decision of the Apex Court in case of ***Dr.K.R.Laxmanan Vs. State of Tamil Nadu*** reported in AIR 1996 Supreme Court 1153 wherein also the Apex Court has referred to and relied upon the decision in case of Satyanarayan (supra) for holding that wherever a game of skill is being played either for stake or otherwise the same would not be termed to be gambling.

6. The applicants have submitted that the panchnama indicate that players were found having more than three cards and hence it cannot be said that they were playing game of three cards. The Club has permitted playing of Rummy and looking to the facts mentioned in the Panchnama, it can lead to only inference that the only the Game of Rummy was actually being played. It is not the case of investigating agency that any other game like “three Cards” was actually being played. It is contended by the applicants that except bald

allegation that " In card room gambling is being played" no material or statement shows that except Rummy any other Card Game dependent on chance was ever being played. In view of this the applicant cannot be subjected to undergo criminal trial when there is no evidence or material taken on their face value capable of making out any offence of gambling.

7. The applicants have also relied upon the various decision of this Court in various matters wherein this Court has time and again restricted the authorities from interfering with the Game of Rummy played in the Clubs and Gymkhanas.

8. The Court in Special Civil Application No. 10105 of 2001 (Coram Kundan Singh J) decided on 5.11.2001 that Rummy being a game of skill the playing thereof need not be interfered with. In another matter being Special Civil Application 3341 of 2001 this Court had taken identical view in its decision dated 7.08.2001. In Special Civil Application No. 5474 of 1997 this Court (Coram S.D.Dave J) in its decision dated 20.11.1997 has also

restrained the authorities from interfering with the playing of the game of Rummy.

9. Shri V.M.Pancholi, Shri Gandhi and Shri Patel for the respondents Complainant, member-applicant seeking to be joined as party, and APP respectively have vehemently opposed these petitions. They have contended that material produced along with the charge-sheet is sufficient to sustain the allegation of commission of offence under section 4 and 5 of the Act. This Court may not quash the charge sheet at this stage. Its their contention that under the guise of Rummy actually the gambling is being played and therefore it being matter of evidence the same need not be quashed under section 482 of the Code. The Respondents have relied upon the decision of this Court in case of ***National Amateur Gymkhana Vs. Shri Pramodkumar Zha DSP*** reported in 1994(2) GLH 362 and contended that what game was played being a matter of evidence the proceedings need not be quashed under inherent powers of this Court.

10. The Respondents have submitted that the peon

rendering serves in Card-room has stated that Gambling was going on.

11. The Club is charging Rs.20 per pack of Card and one accused in said to have been non-member of the club. All these facts would go to show that the proceeding might not be quashed in inherent powers of this court.

12. In answer to the contention of the applicant that even in the charge-sheet the Police has stated in Gujarati Language " *Rami Ramadi ne*" meaning thereby offence is committed by playing Rummy, it is contended by the respondents that the words "*Rami*" and "*Ramadi ne*" in Gujarati Language means "playing" and "making them play". The applicant cannot take advantage of the usage of word "Rami" which is meant to be "playing" and it does not refer to the Game of Rummy as sought to be canvassed by the applicant. In other words the Police has mentioned in the Charge-sheet that the offence of Gambling is committed by playing and making others play the Cards games.

13. The Club cannot permit playing of gambling in guise of permitting Rummy and hence the

offence need to be tried and the proceedings need not be quashed under section 482 of the Code.

14. This Court has taken into consideration the entire record and rival submissions of the respective counsels of the parties.

15. The following emerge from the record and submission.

16. The Club is having card room since quite some time. The members keep playing various card games in the Card Room.

17. The Club is charging Rs.20 per Pack of Card given to the players.

18. The Club is not levying any extra charge in case of other games like badminton, tennis, etc. The extra charge is levied only in case of Card Games.

19. The Panchmana show that on each table persons were playing. On some table the player was holding 27 Cards whereas on some table players were holding 30 cards.

20. The individual players i.e. the accused herein above have been found with sizable cash amount

as its stated in the panchnama. One player is said to have been found with cash amount of Rs.15,050, Another player is said to have been found with cash amount of Rs. 35,000.The Third player is said to have been found with cash amount of Rs. 20,050. The Fourth player is said to have been found with the cash amount of Rs. 10,840. On other tables also players were found with cash amount as big as Rs. 60,200 on their persons.

21. The Total amount of Rs. 2,64,080 in cash was recovered from the players playing Card Games on various Tables in the Card Room of the Club.

22. Total 17 persons were found playing Card Games in the Card Room of the Club with the help of plastic coins/tokens of different denominations.

23. Total 268 plastics tokens/coins of different denominations were recovered in raid as it is reflected in the panchnama.

24. The Investigating Officer has stated in the affidavit that vide order dated 25.03.2005 the Police Commissioner Surat has authorized

Police Inspector, and Police Sub Inspector to investigate such offence under section 6(1)(i) of the Act.

25. The respondent no. 2 has averred that even the game of Rummy is not permitted in the memorandum of association and the Charity Commissioner has suo moto taken up the matter vide its notices dated 3.07.2006 and 26.07.2006.

26. The Respondent No.2’s husband was reprimanded and debarred from entering the Club from 15.05.2006 to 5.06.2006, which he kept on violating and ultimately complaint came to be filed.

27. Against the aforesaid factual backdrop the rival contentions need to be examined.

28. It is important to note that what is prohibited under the Act is playing the game of chance for gain or lose. The Apex Court has held that when the game in question is predominantly that of skill and the factor of chance is very limited than such games or gambling would be exempted on account of provisions of the saving section in the

statute. In the instant case also Section 13 provides that nothing in this Act shall be held to apply to any game of mere skill whenever played. Keeping such provisions in mind the Apex Court has in fact decided that game of Rummy being a game requiring skill is not gambling so as to attract the provisions of the Act. Thus if had it been the case of the investigating agency that the applicant were found playing Game of Rummy in the Card room of the Club and if the proceeding was initiated only on that account than certainly it deserved to be quashed as its held by the Apex Court in case of Satyanarayan(supra) that Game of Rummy being game of skill is not gambling. But in the instant case as its seen herein above it is rather case of the investigating agency that under the guise of Rummy, in fact game of chance was being played. The decision of this Court in case of National Ameteur Gymkhana (supra) though slightly on different facts would be applicable in the facts of this case also. In case of National Ameteur Gymkhana (supra) there was a specific allegation that players

were playing Card Game of “Three Cards”. Whereas in the present case such allegation of playing “ Three Card” is lacking. However it deserves to be borne in mind that the allegation and proceedings are not based upon any statement or material that the players were playing Game of Rummy only. Thus what game was being played being matter of trial, it would not be proper to quash the proceedings at this stage.

29. This Court need not elaborately discuss and analyze the material on record so as to affect the contentions of either party at the trial.

30. The various unreported decisions of this Court cited by the Counsel for the applicants are of no avail to them as they are rendered in all together a different set of facts and circumstances. These decisions are rendered in Special Civil Application seeking writ of mandamus or prohibition restraining the authorities not to interfere with the playing the Card Game of Rummy in various Gymkhanas and clubs. In these decisions also it deserves

to be noted that this Court has cautioned against playing of any other card games of chances in the guise of Game of Rummy.

31. The decision of the Apex Court in case of ***State of W.B. Vs. Swapan Kumar Guha*** reported in AIR 1982 Supreme Court p.949 cited by the Counsel for the applicant to show that even if high stakes are involved in the transaction or game no offence is made out if the ingredient offending section are not met also would not help the case of the applicant for quashing the criminal proceedings. The Apex Court while examining the facts of that case as to whether the Money Scheme alleged to be offending was in fact such as to attract penal clauses and was offending the provisions of the Prize Chit Funds and Money Circulation Scheme (Banning) Act, observed that even high stakes or investments in itself would not amount to indulging into any scheme of making easy money banned by the Prize Chit Funds and Money Circulation Scheme (Banning) Act. In the instant case the moot question is whether the game being played by the accused was in fact

game of chances or it was a Game of Rummy only so as to take it away from the clutches of the Act being a question of facts deserves to be decided only in the trial.

32. The Panchnama shows that each of the accused was carrying sizable amount of cash. The raid was carried at night and Panchnama was drawn at 00.00 Hours. The plastics coins/ tokens of different denominations were found on every table. The peon serving in the Card Room has stated that in the Card Room Gambling with going on. The Club did collected charges of Rs.20 per Pack of Cards but it did not collect such extra charges for any other games like badminton, table tennis etc. These facts and material show that the contention of applicant for quashing the criminal proceedings merely on their plea that they were playing only the Game of Rummy deserves to be rejected.

33. Whether the Game played by the accused was a game of skill or at least predominantly game of skill so as to take it away from the purvey of the Act being a matter of evidence the criminal proceedings at this stage cannot be

quashed.

34. The prayer made in the Special Criminal Application 945 of 2006 being sweeping in nature cannot be granted as the Police Authority cannot be restrained from carrying any investigation or inquiry in any premises or room merely on the spacious plea that the game of rummy is being played. Of course on inquiry if police finds that only game of Rummy is being played that the players may not be unnecessarily harassed. It would not be proper for this Court to issue sweeping direction in these matters not to carry out search in the club premises as the players are playing the Game of Rummy only which is declared to be a game of skill by the Apex Court and hence not amounting to gambling under this Act.

35. In the result the Misc Criminal Application 10238 of 2006 for amendment is allowed. The Criminal Misc Application 8116 of 2006 is also allowed and the applicant is permitted to be joined as party in the proceedings of Special Criminal Application No. 945 of 2006. Rule is

made absolute in these two applications. Whereas the Criminal Miscellaneous Application No. 5701 of 2006 and Special Criminal Application No. 945 of 2006 are dismissed. Rule is discharged.

36. Orders accordingly

(S.R.BRAHMBHATT, J.)

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